



National Association of Tower Erectors

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August 27, 2010

Dr. David Michaels
Assistant Secretary of Labor
Occupational Safety & Health Administration
200 Constitution Avenue NW
Washington, DC 20210

Dear Dr. Michaels,

On behalf of the National Association of Tower Erectors, I am writing to elaborate on discussions you had recently with your staff on matters involving our collaboration with OSHA.

At the outset, I wish to express our appreciation for your agency's expertise and diligence through the years on various issues of mutual importance. The health and safety of tower workers, and the expansion of vital communications services so crucial to the nation's economy and homeland security, have been significantly enhanced as a result of our mutual endeavors.

As you know, we have engaged the OSHA Directorate of Cooperative Programs in lengthy negotiations over the intended renewal of the National NATE/OSHA Partnership Agreement. Admittedly, this has been a frustrating experience. Although there was initially frequent communication between NATE and OSHA, unfortunately the last five versions of the Agreement were not provided to NATE until the final draft was received.

As you also know, your staff presented us with the final draft in late June, and it is our understanding that you were subsequently briefed on its contents. Regrettably, after reviewing the final draft, NATE's Board of Directors has determined that we cannot accept or agree to partner with OSHA under the revised final Agreement.

Benefits of the Agreement

Allow me to emphasize that improving tower climber health and safety through the creation of a culture of safety in this industry is a common goal that NATE and OSHA share. The results of the previous partnership program demonstrate that by OSHA's own standards, such as the DART and TCIR rates, those goals were being met.

Despite that success, numerous benefits previously provided to NATE under the Partnership have been removed from the Agreement. In particular, previous cooperative language – that a focused inspection

Providing a unified voice for the tower erection, maintenance and service industry

Safety from the ground up!

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checklist for tower site safety would be followed for all tower site inspections involving partnering companies – was removed.

This checklist served the dual purpose of helping OSHA compliance officers focus on those safety and health issues specific to tower sites, while creating an understanding that participating companies would follow these stringent best practices. These companies could operate in confidence that they would not be subjected to the misapplication of federal rules developed for working at heights on unrelated structures – such as buildings, bridges or skyscrapers. The Tower Site Focused Inspection Checklist saved OSHA and NATE members time and money by providing education and mutual understanding on how best to address the highest percentage of potential root accident causes to keep tower climbers safe.

Additional Benefits Removed

The revised Agreement also removed the following benefits:

- A 10% reduction in fines for good faith, a matter on which NATE was previously advised, was addressed in an agency-wide rule in April;
- The authority of Regional Administrators to negotiate fines – language removed from the document even though the authority will apparently remain in force; and
- No fines being given for less-than-serious violations if corrected immediately.

NATE reluctantly agreed to release the 10% reduction for good-faith language. The remaining issues, however, remove the incentive for NATE members to participate in this program.

OSHA's Benefits

OSHA's benefits for participating in this program were not diminished at all. OSHA would still:

- Gain access to specific tower workers' health and safety data the agency would otherwise not have;
- Have thousands of tower sites undergo detailed and extensive safety audits at no cost to OSHA;
- Obtain data from those site safety audits, highlighting not only advances in safety but also documenting hazards that are discovered and abated;
- Have the results of those safety audits calculated for the agency;
- Have details on requisite industry training to OSHA's own standards; and
- Have NATE pay for, administer and operate this program, reducing OSHA's involvement and expenses to a minimum.

This list does not include the investment of additional resources NATE made to improve safety under the Partnership Agreement.

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Program Success

The NATE/OSHA Strategic Partnership was a success. Fatalities for participating members were dramatically reduced and DART and TCIR rates show that program participants experienced substantial increases in safety over the last two years and when compared to average BLS rates. Acting Assistant Secretary Jordan Barab stated that, "Participation in the OSP has proven to be an effective strategy and tool in addressing this industry's unique hazards."

Industry Mobility

The tower erection, service and maintenance industry is mobile. Unlike other businesses that operate in factories or have lengthy stays at defined venues which facilitate safety inspections, tower workers are on job sites for remarkably short periods of time - perhaps a week for new construction and often one day or less for maintenance work. Because of this fact, the best method for OSHA to improve tower climber safety has been through cooperative endeavors. As noted above, this has been successful.

The Economics of Tower Site Safety

During a previous meeting between NATE leaders and representatives from OSHA's Directorate of Cooperative Programs, NATE was asked if safety was not enough reason to proceed with the Partnership without the benefits to NATE members approved in the previous Partnership.

The answer comes in two parts. First, make no mistake about NATE's dedication to safety. Tower climber safety is at the heart of the Association's mission and its activities. NATE has developed tower safety resources, safety standards, online and in-person training opportunities, educational sessions and webinars dedicated to safety. The Association also continues to invest its resources in outreach programs to educate all aspects of the industry on the critical need for decisions to be driven by safety. NATE will remain at the forefront as the undisputed leader in tower climber safety.

The second aspect of this answer is those tower companies who operate safely are at an economic disadvantage to those companies who do not follow safety rules. NATE members already invest in the training, equipment, personnel and paperwork that are inherent to safe operations. Participation in the Partnership requires additional resources of personnel, training and adherence to specific requirements.

Ironically, companies which are not operating safely have further economic advantages in gaining work. As noted above, because the highly mobile nature of this industry reduces the odds of being subject to OSHA inspections, those same companies are willing to risk being caught by OSHA for the savings they reap from not adhering to best practices for safety. The risk to workers is further heightened by an industry that often pays bottom dollar when awarding bids to companies, enhancing the opportunities for those companies who keep their overhead low by not investing in worker safety.

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Conclusion

We remain greatly disappointed that an agreement could not be reached to renew the National NATE/OSHA Partnership, especially given OSHA's conclusions that the program improved health and safety of workers in the tower erection, service and maintenance industry.

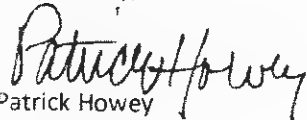
It is our sincere hope that despite this setback, we will be able to successfully collaborate on other priorities in a timely fashion for the betterment of the public in general and tower workers in particular. Indeed, we discussed two such matters when NATE officials met with the Directorate of Construction in June.

The first deals with the overdue but critical modification to CPL 2-1.36, the riding the line Compliance Directive. Your staff acknowledged OSHA's support for adopting revisions to allow application of the Directive to service and maintenance work, expanding its scope beyond the current focus of tower construction. In fact, we were told at the meeting that "This is an important directive we want to get finished ... we are poised to move forward and we are anxious to get this directive completed."

The second is the need for tower safety regulations. The need for this regulation was emphasized by the ACCSH Tower Erection Workgroup in 2004, whose recommendations for tower safety regulations were presented to OSHA. Moreover, congressional staff with whom we met, especially on the Senate Subcommittee on Employment Workplace Safety, offered their abiding interest in helping to promote tower safety. Congressional members and staff alike were intrigued by the prospect of an industry actually *seeking* government regulation.

We look forward to continuing to work with you and your colleagues, both now and in the future.

Respectfully,

A handwritten signature in black ink, appearing to read "Patrick Howey". The signature is fluid and cursive, with the first name "Patrick" being more prominent than the last name "Howey".

Patrick Howey
Executive Director

cc: Peter Rouse
Senior Advisor to
President Barack Obama